

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Orange and Rockland Utilities, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9 of the Tax Law for :
the Fiscal Years Ending 10/31/72 & 10/31/74. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of June, 1982, he served the within notice of Decision by certified mail upon Orange and Rockland Utilities, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Orange and Rockland Utilities, Inc.
One Blue Hill Plaza
Pearl River, NY 10965

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of June, 1982.

Annie R. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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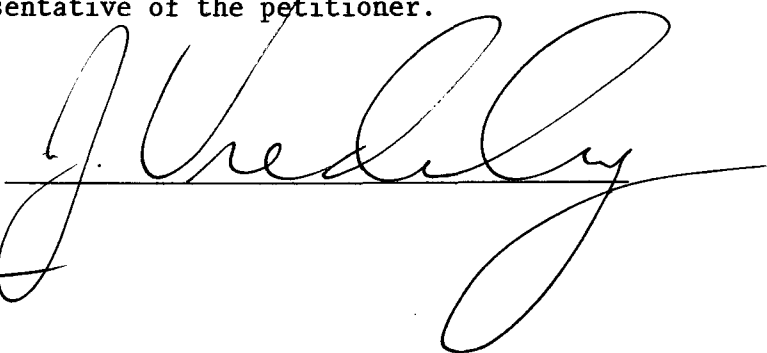

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of June, 1982, he served the within notice of Decision by certified mail upon George R. Ince the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George R. Ince
LeBoeuf, Lamb, Leiby & MacRae
140 Broadway
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
4th day of June, 1982.

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 4, 1982

Orange and Rockland Utilities, Inc.
One Blue Hill Plaza
Pearl River, NY 10965

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
George R. Ince
LeBoeuf, Lamb, Leiby & MacRae
140 Broadway
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ORANGE AND ROCKLAND UTILITIES, INC.
for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9 of the Tax Law for the Fiscal Years
Ended October 31, 1972 and October 31, 1974.

DECISION

Petitioner, Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, New York 10965, filed a petition for redetermination of a deficiency or for refund of Corporation Franchise Tax under Article 9 of the Tax Law for the fiscal years ended October 31, 1972 and October 31, 1974 (File Nos. 11682 and 24997).

A formal hearing was held before Frank A. Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 5, 1977 at 9:15 A.M. Petitioner appeared by LeBoeuf, Lamb, Leiby and MacRae, Esqs. (George R. Ince, Jr. Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Andrew S. Haber, Esq., of counsel). The parties subsequently entered into a stipulation dated November 9, 1981.

ISSUE

Whether, for purposes of section 186 of the Tax Law, petitioner properly based its tax liability on its "year end" paid-in capital rather than on "average" paid-in capital.

FINDINGS OF FACT

1. On June 17, 1974 and on May 20, 1977 the Audit Division issued notices of deficiency to petitioner, Orange and Rockland Utilities, Inc., for the fiscal years ended October 31, 1972 and October 31, 1974 in the amounts of \$23,986.35

and \$4,452.79, respectively. These deficiencies were based on the Audit Division's recomputation of petitioner's tax liabilities using average paid-in capital rather than the year end paid-in capital figures used by petitioner as the basis for the tax.

2. In November and December of 1978 (subsequent to the filing of the petition), petitioner filed a series of amended tax reports under Section 186 of the Tax Law for periods beginning with the fiscal year ended October 31, 1972 and running through 1977. On these amended returns, petitioner sought refunds of claimed overpayments of tax.

3. As a result of the filing of amended returns by petitioner and an audit of such returns by the Audit Division, it was determined that petitioner overpaid the amount of tax due under section 186 of the Tax Law for each of the fiscal years ended October 31, 1972 and October 31, 1974, as well as for the quarter ended October 31, 1975 and the years 1976 and 1977.

4. In order to settle the matters pending before the State Tax Commission and to avoid further litigation, a stipulation was entered into on November 9, 1981 between the petitioner and the Audit Division which contained the following terms:

(a) Petitioner will, commencing with the year 1980, calculate its tax liability under Section 186 based on the use of average paid in capital;

(b) the refunds of Section 186 tax to be paid to the petitioner in the amounts shown on the attached copy of Consent to Field Audit Adjustment were based on use of year

end paid¹ in capital as reported by Petitioner on its amended returns;

(c) the Audit Division withdraws the proposed deficiencies in Section 186 tax for 1972 and 1974;

(d) the amounts of tax under Section 186 overpaid by the Petitioner for the years ending October 31, 1972 and October 31, 1974 were \$105,383.00 and \$194,455.00, respectively;

(e) the State Tax Commission may, pursuant to Section 1087(f) of the Tax Law, render a decision that Petitioner has overpaid the tax due under Section 186 in the amounts stated in paragraph (d) for the years ended October 31, 1972 and October 31, 1974 and the Audit Division and the Petitioner consent to such a decision;

(f) the amounts of overpaid tax stated in paragraph (d) shall either be credited to Petitioner's account or refunded to Petitioner under Section 1087(g) of the Tax Law, as the Audit Division in its discretion determines;

(g) the Petitioner waives its right under Section 1090 of the Tax Law to judicial review of the decision of the State Tax Commission entered in the amounts stated in paragraph (d); and

(h) the decision of the State Tax Commission shall become final on the date it is rendered.

¹ The Consent to Field Audit Adjustment showed tax reductions for the following periods in the following amounts:

<u>PERIODS ENDED</u>	<u>TAX REDUCTION</u>
Fiscal year ending 10/31/75	\$195,892.00
Quarter ending 1/31/76	1,054.00
Quarter ending 4/30/76	2,479.00
Quarter ending 7/31/76	8,806.00
Short period 8/1 - 12/31/76	236,103.00
Calendar year ended 12/31/77	232,639.00
Calendar year ended 12/31/78	77.00
Calendar year ended 12/31/79	<u>2,336.00</u>
Total:	<u>\$679,386.00</u>

CONCLUSIONS OF LAW

A. That petitioner, Orange and Rockland Utilities, Inc., overpaid its tax liability under section 186 of the Tax Law for the fiscal years ended October 31, 1972 and October 31, 1974 in the respective amounts of \$105,383.00 and \$194,455.00.

B. That the petition of Orange and Rockland Utilities, Inc., is granted and the Audit Division is hereby directed to credit petitioner's account or refund to petitioner the amounts specified in Conclusion of Law "A".

DATED: Albany, New York

JUN 04 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER